

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ALABAMA
NORTHERN DIVISION

NORMAN TODD,)	
)	
Plaintiff,)	
)	
vs.)	CASE NUMBER 2:07-CV-149-MEF
)	
CITY OF CLANTON, ALABAMA, a)	
municipal corporation; by and through)	JURY TRIAL DEMANDED
its MAYOR, HONORABLE BILLY)	
JOE DRIVER, in his official capacity as)	
Mayor and individually; POLICE CHIEF)	
JAMES HENDERSON, in his official)	
capacity, as well as individually;)	
CORPORAL GREG CHARLES, in his)	
official capacity and individually; and)	
CHRISTINE LITTLEJOHN, an)	
individual,)	
)	
Defendants.)	

REPLY TO PLAINTIFF'S RESPONSE TO
EVIDENTIARY SUBMISSIONS MADE BY DEFENDANTS

Come now the City of Clanton, Alabama, a municipal corporation, ("the City"), Mayor Billy Joe Driver, Police Chief James Henderson and Greg Charles to Reply to the Plaintiff's Response to their Evidentiary Submissions made in support of their pending Motion to Dismiss, and state as follows:

I. PLAINTIFF'S RESPONSE IS UNTIMELY.

On February 23, 2007, this Court entered an Order allowing the plaintiff to file a response to the defendants' Motion to Dismiss, including a brief and any evidentiary submissions, on or before **March 9, 2007**. See Order, Doc.3. However, the plaintiff's "Reply to Defendants' Evidentiary Submission" was not filed until **March 28, 2007**. See Plaintiff's Reply, Doc.9.

Therefore, the plaintiff's response is untimely and the defendants ask that it be stricken from the record.

II. THE POLICE REPORT IS ADMISSIBLE EVIDENCE.

The plaintiff argues that Defendants's Exhibit 1, the police report, is inadmissible hearsay. See Plaintiff's Reply, p. 1, Doc.9. However, the police report has not been offered to prove the truth of the matter asserted and, therefore, is not hearsay. See ALA.R.EVID. 803; see also Defendants's Evidentiary Submissions, Exhibit 1, Doc.3. In any event, even if the police report is hearsay, it is admissible hearsay because it is a record or regularly conducted activity and/or a public record and report. See ALA.R.EVID. 803. In the case-at-bar, the plaintiff, Norman Todd is not a defendant in a criminal trial. The police report is simply a business record and/or public record that has, thus far, been offered to show information which was made known to Officer Greg Charles by Defendant Littlejohn at the time the alleged events occurred and which gave *arguable* probable cause for the plaintiff's arrest.¹

III. THE POLICE REPORT CONTAINS ALLEGATIONS OF CONDUCT WHICH CONSTITUTES A FELONY UNDER ALABAMA LAW.

The plaintiff argues that the police report "shows that there was nothing more existing at the time other than a simple civil matter and dispute between two persons whom had been dating." Plaintiff's Reply, p. 2, Doc.9. Quite to the contrary, the police report shows that Defendant Littlejohn filed a complaint with the Clanton Police Department describing the plaintiff's unauthorized use of a vehicle she owned. See Defendants's Evidentiary Submissions, Exhibit 1, Doc.3. This is a felony. ALA.CODE §32-8-81 and §13A-8-11 (1975).

¹ The Defendants' reserve the right to offer this evidence as proof of other matters than those stated herein throughout the course of this litigation.

CONCLUSION

The Defendants hereby adopt and incorporate every arguments and defense previously asserted in their motion to dismiss and in their briefs and evidentiary submissions filed in support of their motion to dismiss as if they were fully set forth herein.

From a prima facie reading of the Complaint, the plaintiff has failed to state a claim against the City, Mayor Driver, Chief Henderson, or Officer Greg Charles under federal or state law for which relief can be granted and, therefore, they are entitled to a judgment in their favor and as a matter of law.

/s/ James W. Porter II

James W. Porter II, one of the
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/s/ Natalie A. Daugherty

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the above and foregoing has been ***electronically filed*** with the Clerk of the Court using the CM/ECF system which will send notification of such filing upon the following, this the 14th day of May, 2007. If Notice of Electronic Filing indicates that Notice should be delivered by other means to any of the following, I certify that a copy will be sent via U.S. Mail, properly addressed, postage prepaid.

Donald G. Madison, Esq.

418 Scott Street

Montgomery, AL 36104

/s/ James W. Porter II

OF COUNSEL